

EVIDENCE — DISCOVERY — *BRADY*— “Material evidence” that must be disclosed under *Brady*.....Revised 11/2009

Under *Brady v. Maryland*, 373 U.S. 83 (1963), a defendant only has a due process right to disclosure of “material” exculpatory evidence. *State v. Atwood*, 171 Ariz. 576, 606, 832 P.2d 593, 623 (1992) (overruled on other grounds). The standard for whether *Brady* requires disclosure is if the evidence is material to the issue of guilt or innocence, not whether the impact of the undisclosed evidence had any impact on the defendant’s ability to prepare for trial. *United States v. Agurs*, 427 U.S. 97, 112 n.20 (1976). Evidence is “material” only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *U.S. v. Bagley*, 473 U.S. 667, 682 (1985); *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996). A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of the trial. *Bagley*, 473 U.S. at 682; *State v. Spears*, 184 Ariz. at 287, 908 P.2d at 1072.

However, “a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant’s acquittal.” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (citing *Bagley*, 473 U.S. at 682). The question then, “is not whether a defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Id.* Consequently, there is no constitutional violation when the non-disclosed evidence is not of sufficient significance so as to deny the defendant a fair trial. *Agurs*, 427 U.S. at 108.

In determining materiality, the undisclosed evidence is to be taken and analyzed as a whole, not piece by piece. *Kyles v. Whitley*, 514 U.S. at 436-37. “[T]he Constitution is

not violated every time the [prosecutor] fails or chooses not to disclose evidence that might prove helpful to the defense.” *Id.* (citing *Bagley*).